

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 1:04CR495
	)	
SHAWN P. MCGHEE,	)	
	)	
Defendant.	)	

STATEMENT OF FACTS

The United States and the defendant, Shawn P. McGhee ("McGhee"), agree that had this matter proceeded to trial, the United States would have proven the facts set forth in this statement of facts beyond a reasonable doubt.

I. BACKGROUND

1. From in or about December 2000 until in or about June 2001, McGhee was employed at PurchasePro.com, an internet software company headquartered in Las Vegas, Nevada ("PurchasePro"). During this time, McGhee held the position of Chief Operating Officer ("COO") at PurchasePro.

2. In 2000 and 2001, PurchasePro was engaged in the sale of sourcing software, materials management and procurement software and services. PurchasePro's common stock traded on the NASDAQ National Market under the symbol "PPRO".

3. By mid-2000 and continuing through 2001, PurchasePro's principal product was a so-called business-to-business

"marketplace license". As promoted by PurchasePro, the business-to-business marketplace license allowed small and large businesses to buy and sell products on the internet in an allegedly cost efficient manner. PurchasePro sold software to marketplace license purchasers that allegedly enabled those purchasers either to buy and sell products by participating directly in PurchasePro's own web-site based marketplace or to create their own co-branded marketplace using PurchasePro's software.

4. As the COO at PurchasePro, McGhee reported directly to the company's Chief Executive Officer. McGhee's duties and responsibilities included, but were not limited to, supervising the development and implementation of appropriate corporate controls and, along with two other senior officers at PurchasePro, interacting with PurchasePro's independent outside auditors.

5. As a public company, PurchasePro was required to comply with the rules and regulations of the United States Securities and Exchange Commission ("SEC"). Those rules and regulations are intended to protect members of the investing public by, among other things, requiring that a company's financial statements are accurately recorded and reported to the investing public. PurchasePro made periodic filings with the SEC, which included,

among other things, its financial statements.

6. As a public company, PurchasePro retained an independent public accounting firm to act as PurchasePro's independent outside auditors ("PurchasePro's auditors"). Among other responsibilities, PurchasePro's auditors were required to decide whether to approve the recognition of revenue resulting from the sale of marketplace licenses and other products in PurchasePro's audited financial statements. McGhee and other senior members of PurchasePro's management knew that the existence of other transactions related to the sale of a marketplace license would be material to the decision of PurchasePro's auditors to approve recognition of all, some, or none of the revenue from the sale of a marketplace license.

7. McGhee and other senior members of PurchasePro's management had the ultimate responsibility for proper revenue recognition of PurchasePro's sales and for the reporting of accurate financial statements to the public.

## II. THE CONSPIRACY TO COMMIT SECURITIES FRAUD

8. From in or about November 2000 to in or about June 2001, in the Eastern District of Virginia and elsewhere, McGhee and his coconspirators knowingly, willfully, and unlawfully combined, conspired, confederated, and agreed with each other, to commit the offense of securities fraud against the United States,

directly and indirectly, by the use of means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, and to use and to employ, in connection with the purchase and sale of securities issued by PurchasePro, manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which would operate as a fraud and deceit upon the purchaser and seller, in violation of 15 U.S.C. Sections 78j(b) and 78 ff.

### III. MANNER AND MEANS OF THE CONSPIRACY TO COMMIT SECURITIES FRAUD

9. McGhee and others committed acts in furtherance of the manipulative and deceptive device, contrivance, scheme, and artifice to defraud shareholders of PurchasePro, as described further below.

10. McGhee and other officers and employees of PurchasePro falsely inflated the revenue that PurchasePro recognized and announced to the investing public from the sale of PurchasePro

marketplace licenses and other products.

11. In order to induce purchasers to buy the PurchasePro marketplace licenses, McGhee and other officers and employees of PurchasePro made oral and written commitments that PurchasePro would, among other things, do one or more of the following: (i) buy an equivalent or greater amount of products from the license purchasers; (ii) otherwise make the license purchasers whole in the future for the cost of the marketplace license purchases. Collectively, these commitments shall hereinafter be referred to as "side agreements."

12. McGhee and other officers and employees of PurchasePro mislead and otherwise deceived PurchasePro's auditors about the existence of the side agreements. As further described in paragraphs 17-23 below, McGhee and other officers and employees of PurchasePro mislead and otherwise deceived PurchasePro's auditors because they believed that disclosure of the side agreements would cause PurchasePro's auditors to disapprove of the revenue recognition for the full amount of the sales of marketplace licenses and other products. As a result, McGhee and other officers and employees of PurchasePro agreed not to disclose the side agreements to PurchasePro's auditors.

13. McGhee and other officers and employees of PurchasePro believed that, to the extent that revenue from the sales of

marketplace licenses and other products was not approved by PurchasePro's auditors, PurchasePro would not to meet its announced quarterly revenue projections. McGhee and other officers and employees of PurchasePro believed that, to the extent PurchasePro failed to meet its announced quarterly revenue projections, it was likely that the price of PurchasePro's publicly traded stock would decline in value.

14. The manipulative and deceptive device, contrivance, scheme, and artifice to defraud had multiple goals, including, but not limited to, the following:

(A) It was a goal of the scheme that McGhee and other officers and employees of PurchasePro would falsely inflate the revenue reported by PurchasePro to the public and in its filings with the SEC for PurchasePro's first quarter of 2001 by a material amount. Among other things, McGhee and other officers and employees of PurchasePro achieved this goal when PurchasePro reported revenue on April 26, 2001 for the first quarter of 2001 that was falsely inflated as a result of McGhee's conduct and the conduct of other officers and employees of PurchasePro.

(B) It was a goal to sustain PurchasePro's outward appearance as a growing and successful internet software company in late 2000 and early 2001 when McGhee and other officers and employees of PurchasePro knew that PurchasePro's reported revenue

growth resulted in large part from the use of secret side agreements to sell PurchasePro's revenue generating products.

(C) It was a goal of the scheme to meet the revenue estimates for PurchasePro that were disseminated to Wall Street and the investing public. McGhee and other officers and employees of PurchasePro believed that meeting Wall Street's revenue expectations was the best way to support the price of PurchasePro's publicly-traded stock.

(D) Although McGhee did not personally receive a profit from the scheme, it was a goal of the scheme for McGhee and other officers and employees of PurchasePro to profit personally by:

- (i) exercising options to buy PurchasePro stock if the price of the stock rose above the strike price of his options and to sell that same PurchasePro stock at a profit;
- (ii) keeping his job at PurchasePro and continuing to receive a salary at PurchasePro;
- and (iii) preserving the possibility of obtaining profitable stock options in the future.

15. On or about April 10, 2001, the PurchasePro Board of Directors authorized McGhee to receive stock options for 125,000 shares of PurchasePro stock. McGhee relinquished his right to the stock options on May 14, 2001.

#### IV. OVERT ACTS UNDERTAKEN IN FURTHERANCE OF THE CONSPIRACY TO COMMIT SECURITIES FRAUD

16. In furtherance of the conspiracy to commit securities fraud and to effect the objects of the conspiracy, McGhee and his conspirators performed numerous overt acts in the Eastern District of Virginia and elsewhere, including, but not limited to, the following:

17. In or about March and April 2001, McGhee negotiated the sale of a PurchasePro marketplace license for about \$3.5 million to an internet software consulting company in California (hereinafter "Internet Software Consulting Company I"). McGhee signed the \$3.5 million marketplace license contract with the Internet Software Consulting Company I (hereafter "\$3.5 million marketplace license") and represented that it had been executed by or before March 31, 2001 even though the contract was not executed by the parties until after March 31, 2001. McGhee knew and understood that it was the policy of PurchasePro and PurchasePro's auditors not to recognize revenue for a quarter unless the underlying contract supporting the revenue had in fact been executed in writing by the parties by the close of the quarter.

18. McGhee induced the principal from the Internet Software Consulting Company I to buy the \$3.5 million marketplace license by committing that, in the second quarter of 2001, PurchasePro



would buy approximately \$8 million or more in internet software consulting services and licences ("Second Quarter Internet Consulting Services Contracts") from another company controlled by the principal of the Internet Software Consulting Company I ("Internet Software Consulting Company II"). McGhee informed and discussed the inducement with other senior officers at PurchasePro, and these officers and senior managers, knew about the inducement that was provided to the Internet Software Consulting Company I.

19. In or about April 2001, McGhee signed and executed a confirmation letter to PurchasePro's auditors that was backdated to March 31, 2001 that falsely stated, among other things, that there were no obligations to deliver future services and no unidentified oral agreements relating to the \$3.5 million marketplace license. McGhee and other officers and employees of PurchasePro knew and understood that, if PurchasePro's auditors were informed about the full terms of the side agreement with both the Internet Software Consulting Company I and Internet Software Consulting Company II, the auditors would not approve recognition of some or all of the \$3.5 million as revenue in the first quarter of 2001.

20. In or about April 2001, McGhee learned that PurchasePro could not cash the Internet Software Consulting Company I's \$3.5

million check in payment for the marketplace license because of insufficient funds in the Internet Software Consulting Company I's bank account. McGhee caused PurchasePro to pay the Internet Software Consulting Company II under the Second Quarter 2001 Internet Consulting Services Contract in an amount sufficient to allow the Internet Software Consulting Company I to cover its \$3.5 million check to PurchasePro. McGhee and other officers and employees of PurchasePro caused the \$3.5 million associated with the marketplace license to be improperly recorded as revenue for PurchasePro in the First Quarter of 2001 and reported by PurchasePro as revenue for the first quarter of 2001 to the investing public.

21. On or about April 26, 2001, McGhee and other officers and employees of PurchasePro issued, or caused the issuance of, a press release to the public stating that PurchasePro had earned revenue in the first quarter of 2001 in the amount of approximately \$29.8 million. McGhee and other officers and employees of PurchasePro knew at the time that this April 26, 2001 press release by PurchasePro was materially false and misleading because a material amount of the \$29.8 million was improperly recorded revenue.

22. On or about May 25, 2001, McGhee represented to Arthur Andersen that there were no material transactions that were not

properly recorded in the PurchasePro accounting records and that the financial statements properly recorded the related party transactions (including sales and purchases). McGhee knew and understood that these representations were false and misleading.

23. On or about May 29, 2001, in the Eastern District of Virginia and elsewhere, McGhee and other officers and employees of PurchasePro filed, and caused the filing of, PurchasePro's quarterly report on Form 10-Q for the fiscal quarter ending March 31, 2001 ("Form 10-Q filing"), which disclosed that the company had earned approximately \$16 million in revenue for that quarter. McGhee and other officers and employees knew and understood that the approximately \$16 million in revenue reported by PurchasePro in the Form 10-Q filing was materially false and misleading because the filing included approximately \$3.5 million of improperly recorded revenue from the marketplace license purchased by the Internet Software Consulting Company I.

#### V. CONCLUSION

24. McGhee admits that this statement of facts does not represent and is not intended to represent an exhaustive factual recitation of all the facts about which he has knowledge relating to the criminal conspiracy described herein.


25. McGhee admits that his actions, as recounted herein, were in all respects intentional and deliberate, reflecting an

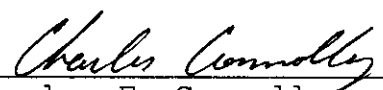
intention to do something the law forbids, and were not in any way the product of any accident or mistake of law or fact.


26. The foregoing statement of facts is a summary of the principal facts that constitute the legal elements of the offense of conspiracy to commit securities fraud. This summary does not include all of the evidence that the government would present at trial or all of the relevant conduct that would be used to determine the defendant's sentence under the Sentencing Guidelines and Policy Statements.

Respectfully submitted,

PAUL J. MCNULTY  
UNITED STATES ATTORNEY

By:   
Dana J. Boente  
Assistant United States Attorney

By:   
Charles F. Connolly  
Assistant United States Attorney

By:   
Adam A. Reeves  
Trial Attorney, Criminal Division  
United States Department of Justice

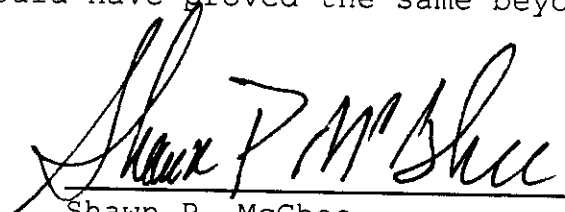
Defendant's Stipulation and Signature

After consulting with my attorneys and pursuant to the

plea agreement I entered into this day with the United States, I hereby stipulate that the above statement of facts is true and accurate. I further stipulate that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

Date:

9/21/04

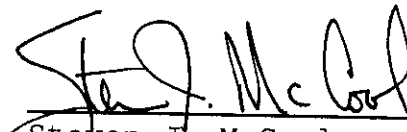
  
Shawn P. McGhee  
Defendant

Defense Counsel's Signature

I am the attorney for defendant Shawn P. McGhee. I have carefully reviewed the above statement of facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

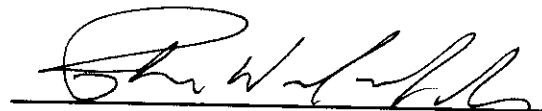
Date:

9/21/04

  
Steven J. McCool  
Counsel for the Defendant

Date:

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Pat Munroe Woodward, Jr.  
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